

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AARON ABADI,

Plaintiff,

-v-

CITY OF NEW YORK,

Defendant.

21 Civ. 8071 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

*Pro se* plaintiff Aaron Abadi brought this action under 42 U.S.C. § 1983 and state common law against the City of New York (the “City”) seeking a preliminary injunction. He alleged that that Emergency Executive Order 225, which required persons to be vaccinated against COVID-19 to enter indoor dining, entertainment, recreation, and fitness venues, and Executive Order 78, which required employees of the City and City contractors to be vaccinated or take weekly tests for COVID-19, violated his constitutional right to equal protection and bodily integrity and subjected him to false imprisonment.

On February 4, 2022, the Court denied the motion for a preliminary injunction. Dkt. 24. On February 7, 2022, the City moved to dismiss Abadi’s amended complaint. Dkt. 25. The same day, Abadi filed a notice of interlocutory appeal in the United States Court of Appeals for the Second Circuit (the “Circuit”) from the Court’s decision denying his request for emergency relief. Dkt. 28.

On March 9, 2022, the Court received a letter from the City arguing that the portions of Abadi’s amended complaint challenging the Key to NYC program were now moot, because Mayor Eric Adams has lifted the vaccination requirements for restaurants, indoor gyms, and places of entertainment and recreation. Dkt. 30. Abadi responded, contesting the City’s claim of

mootness. Dkt. 31. On March 14, 2022, the Court held the motion to dismiss in abeyance pending the Circuit's resolution of Abadi's interlocutory appeal. Dkt. 32.

On July 14, 2022, the Circuit's mandate issued, denying Abadi's motions and summarily dismissing his appeal for "lack[ing] an arguable basis either in law or in fact." Dkt. 33 (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). This Court then, citing substantially the same reasons reviewed in the Court's opinion denying Abadi's motion for a preliminary injunction, *see* Dkt. 24, granted the City's motion to dismiss Abadi's claims, and did so with prejudice. *See Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000). Dkt. 34. On July 18, 2022, Abadi appealed that decision to the Circuit. Dkt. 36.


On May 8, 2023, the Circuit issued, by summary order, its decision on Abadi's July 18, 2022 appeal. Dkt. 38. The Circuit agreed with the Court's determination that the "voluntary cessation of the COVID-19 restrictions at issue render[ed] [Abadi]'s demands for injunctive and declaratory relief in this case moot." *Id.* at 4. The Circuit noted that Abadi's "demands for money damages [had not been] mooted by the repeal of the policies at issue"; rather, Abadi "lacked standing to bring these claims." *Id.* at 4–6. This meant that the Court lacked "subject matter jurisdiction on mootness and standing grounds," such that Abadi's amended complaint was to be dismissed without, rather than with, prejudice. *Id.* at 6. On May 30, 2023, the Circuit issued its mandate to that effect, dismissing the appeal as moot, vacating the judgment of the Court, and remanding with instructions to enter a judgment of dismissal without prejudice. Dkt. 43 at 2.

The Court, consistent with the Circuit's mandate, now grants the City's motion to dismiss Abadi's claims without prejudice. Abadi is therefore not precluded by the dismissal of his claims in this litigation to pursue a new action challenging, *inter alia*, extant city vaccination policies.

However, such an action must be brought in a separate lawsuit. As the Circuit noted, “both the Key to NYC program and the City’s employment vaccination requirement have expired.” Dkt. 38 at 3. Any challenge that Abadi may bring, therefore, would be directed to a new policy, and properly must be the subject of a new lawsuit. Upon the filing of a Complaint, the new lawsuit will be randomly assigned among the judges in this District.

SO ORDERED.

Dated: July 5, 2023  
New York, New York

  
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PAUL A. ENGELMAYER  
United States District Judge